

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI**

IN THE MATTER OF:

CHAPTER 13 NO:

JOE SIMON AND SHARON WELLS

16-10845

NOTICE OF TRUSTEE'S MOTION TO MODIFY PLAN

Should any party receiving this Notice desire to respond or object to said Motion (copy attached), such response or objection is required to be filed **ON OR BEFORE JUNE 17, 2019**, using the CM/ECF system or with the Clerk of this Court at the following address:

Shallanda J. Clay, Clerk of Court
U.S. Bankruptcy Court
Northern District of Mississippi
703 Highway 145 North
Aberdeen, MS 39730

and a copy must be served on the undersigned Chapter 13 Trustee and the Debtor's attorney. If no responses are timely filed prior to the above deadline, the Court may consider said motion immediately after the response deadline has expired. In the event a written response is timely filed, the Court will notify you of the date, time, and location of the hearing thereon.

CERTIFICATE OF SERVICE

I, Terre M. Vardaman, Chapter 13 Trustee, do hereby certify that I have electronically filed the foregoing Notice and corresponding Motion with the Clerk of Court using the CM/ECF system, and I further certify that I either mailed by U.S. Postal Service, first class, postage prepaid and/or electronically notified through the CM/ECF system, a copy of the Notice and Motion to the debtor, debtor's attorney, attorneys of record, the U.S. Trustee, and affected parties in interest as listed on the Certificate of Service of the attached Motion.

DATED: May 15, 2019.

TERRE M. VARDAMAN, TRUSTEE
/S/ Jeffrey K. Tyree, MSB#9049
Attorney for the Trustee

**IN THE UNITED STATES BANKRUPTCY COURT
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TRUSTEE'S MOTION TO MODIFY

COMES NOW, Terre M. Vardaman, Trustee, and files this her Motion to Modify the above styled and numbered case, and in support of same, would show unto the Court the following:

1. The Debtors' Chapter 13 plan was confirmed on May 2, 2016, for a period of 36 months with \$0.00 to the unsecured creditors herein.
2. A material part of the plan provided for the payment of conduit mortgage payments to Ocwen Loan Servicing of \$548.00 per month including escrow commencing with May 2016, while curing prepetition mortgage arrears calculated through April 2016.
3. After the case was confirmed, Deutsche Bank Trust Company filed a proof of claim on July 7, 2016, on behalf of Ocwen Loan Servicing in the total amount of \$47,858.72, showing thereon the prepetition arrearage claim of \$4,218.24 and ongoing conduit payments of \$472.36.
4. Page 4 of the proof of claim showed that it was being filed as a "total debt claim," with the total amount owed on date of maturity, December 1, 2016, expected to be \$50,846.70.
5. At the time the proof of claim was filed, the Trustee notified the Debtor's attorney that the loan would mature prior to the termination of the bankruptcy proceeding, and that absent a loan modification, payment in full of the claim over the life of the plan would render the plan unfeasible. The Trustee subsequently filed a Motion to Dismiss this case on December 16, 2016, stating therein the above sequence of events, and the Debtors responded that they had applied for a loan modification with Ocwen and were approved, and that they were now under a new balloon mortgage with a maturity date of April 2032.
6. After several months of rescheduled hearings while the Trustee attempted to contact Ocwen Loan Servicing to obtain proof of the loan modification, an Order was finally entered on the Trustee's Motion to Dismiss on June 20, 2017, denying the Motion to Dismiss, with the Trustee to continue accruing conduit payments until such time as the Debtors could provide proof of a loan modification, as, in the interim, the mortgage was in the process of being transferred from Ocwen to Nationstar.
7. Servicing for this loan has been transferred a total of three (3) times:

June 20, 2017	from Ocwen/Deutsche Bank to Nationstar/ U.S. Bank National Association
March 19, 2018	from Nationstar/U.S. Bank National Association to MTGLQ Investors c/o Rushmore Loan Management;
September 19, 2018	from Rushmore Management to U.S. Bank Trust National Association/SN Servicing Corp.

8. In the interim, although the Creditor originally filed their proof of claim as a “pay debt in full” claim, they have continued to file Notices of Mortgage Payment Changes, one on October 3, 2017, showing a payment change from \$472.36 to \$580.19 effective 11/1/2017; and another on May 9, 2018, showing a payment change to \$490.98, effective June 1, 2018.
9. The Trustee would show that she has continued making conduit payments on this loan and has cured the prepetition arrearage claim per the original confirmed plan, the proof of claim, and the subsequent Notices of Payment Changes, and now the original 36-month plan period has expired.
10. The Trustee contacted the Debtor’s counsel in September 2018 when excess funds began accumulating in this case, and was advised at that time after several phone calls and emails that it appeared that no loan modification agreement was ever obtained.
11. The Trustee would show that absent strict proof that the Debtors did, in fact, obtain a loan modification that extended the maturity date for their mortgage, it would be in the best interest of the Debtors and the bankrupt estate for the plan period to be extended to 60 months, with the Trustee to continue making conduit payments until such time as the Debtors could apply for and obtain a loan modification, as otherwise the plan would not be feasible based upon having to pay a total of more than \$30,000.00 in remaining principal over the next 24 months.
12. Upon information and belief, the Debtors should qualify for a loan modification or a refinancing of the debt, as they have had a perfect remittance record in this case, and have, in fact, paid in more than the amount due to date.
13. Furthermore, the Trustee is holding approximately \$5,800.00 (plus accruing plan payments) that could be applied towards the current loan balance owed to the mortgagee in order to obtain the loan modification.
14. The Trustee would further show that all other secured/administrative claims have been satisfied, and that as the total unsecured debts herein total less than \$500.00, that those claims should be paid in full from the funds on hand, as well.
15. The Trustee is simultaneously filing a Motion for Accounting with the current servicer for the mortgage, SN Servicing Corp./U.S. Bank Trust National Association as Trustee of Tiki Series III Trust.
16. Other grounds to be shown at the hearing hereon.

WHEREFORE, PREMISES CONSIDERED, the Trustee prays that this Motion be received and filed, and that at the hearing hereon this Motion be approved, and for such other, further, and general relief to which the Trustee and this bankrupt estate may be entitled.

DATED: May 15, 2019

Respectfully submitted:

/S/ JEFFREY K. TYREE, MSB#9049
ATTORNEY FOR TERRE M. VARDAMAN,
CHAPTER 13 TRUSTEE
PO BOX 1326, BRANDON MS 39043-1326
601-825-7663; vardaman13ecf@gmail.com

CERTIFICATE OF SERVICE

I, Jeffrey K. Tyree, attorney for the Chapter 13 Trustee, do hereby certify that I have this day filed the foregoing with the clerk of this court using the CM/ECF system, and I further certify that I served a true and correct copy of same, either electronically or via United States Mail, postage prepaid, to the UNITED STATES TRUSTEE and the following:

William C. Cunningham
wccsinc@gmail.com

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FLOYD HEALY
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U.S. BANK TRUST NATL ASSN
C/O SN SERVICING CORP
323 5TH ST
EUREKA CA 95501

SN SERVICING CORP
PO BOX 660820
DALLAS TX 75266-0820

Dated: May 15, 2019.

/S/ JEFFREY K. TYREE